

UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20

REYNOLDS RECYCLING, INC

Employer

and

Case 37-RC-4100

HAWAII TEAMSTERS AND ALLIED
WORKERS, LOCAL 996, AFL-CIO

Petitioner

SUPPLEMENTAL DECISION AND DIRECTION OF ELECTION

Upon a petition filed on April 7, 2005,¹ a representation hearing was held on April 19, at which the parties stipulated to an Island-wide Oahu unit and stipulated to all but one of the classifications to be included in the unit. The only dispute was the unit placement of redemption center buyers. In the Decision and Direction of Election, which issued on May 20, I found that the redemption center buyers should be included in the unit and directed that an election be conducted in the following unit:

All full-time and regular part-time production workers 1, production workers 2, redemption center buyers, CDL drivers, Class 4 drivers, RVM technicians, head processors, vacation relief employees, maintenance employees and maintenance welders employed by the Employer on the Island of Oahu, Hawaii; excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

¹ All dates herein refer to calendar year 2005 unless otherwise indicated.

On May 24, the Employer filed Motions for Rehearing, to Reopen the Record and to Stay Representation Proceeding, with attached supporting documents, including memoranda and the affidavit of Employer President Terry G. Telfer. On June 6, the Petitioner filed a Memorandum in Opposition to the Employer's motions and on June 8, the Employer countered with a Reply Memorandum. In its motions and supporting documents, the Employer asserted that as a consequence of a meeting held with officials of the State of Hawaii on May 13, the Employer began a complete overhaul of its operations in order to avoid losing its operating permits and/or having fines imposed by the State. According to the Employer's motions, its current unit workforce is not a substantial and representative complement of the workforce it will employ in the reasonably foreseeable future because the changes being made to its operation will substantially increase both the number of job classifications and the number of employees in its workforce. The Employer therefore requested either that the petition be dismissed or held in abeyance until its workforce represents a substantial and representative complement. In its Memorandum in Opposition, the Petitioner argued that the election should be immediately conducted.

After reviewing the parties' submissions, the Acting Regional Director issued an Order Staying Election, Granting Motion to Reopen Record and Remanding Proceeding for Further Hearing and Notice of Representation Hearing on June 9. The Order postponed the election indefinitely and reopened the record to adduce evidence regarding whether the Employer's present employee complement is sufficiently substantial and representative to warrant conducting an election at this time.

Based on the evidence introduced at the June 20 remand hearing and on the entire record,² I find for the reasons discussed below that the Employer's current workforce is a substantial and representative complement of the workforce it will employ in the reasonable foreseeable future and that an election should be conducted forthwith.

Based on the record as a whole, I make the following findings:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The parties stipulated, and I find, that the Employer is a Hawaii corporation with a place of business located in Aiea, Hawaii, where it is engaged in the business of recycling beverage containers and in other related businesses. The parties further stipulated, and I find, that during the 12-month period ending March 31, the Employer sold goods valued in excess of \$50,000 directly to enterprises located outside the State of Hawaii. Based on the parties' stipulation to such facts, I find that the Employer is engaged in commerce and that it will effectuate the policies of the Act to assert jurisdiction in this matter.
4. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act.
5. The parties stipulated, and I find, that there is no contract bar to this petition.

² I have taken administrative notice of and included in the record as Board Exhibits 9 and 10, the Petitioner's June 6 Memorandum in Opposition to the Employer's motions and the Employer's June 8 Reply Memorandum. I also include in the record as Joint Exhibit A, the Declaration of Bruce Iverson dated June 29 with attachment.

As indicated above, the Petitioner seeks to represent certain of the Employer's employees on the Island of Oahu. The Employer contends that the petition should be dismissed or held in abeyance because it does not currently employ a substantial and representative complement of the workforce it will employ in the reasonably foreseeable future. Specifically, the Employer contends that within the next 12 to 18 months, its workforce will increase from about 86 to 360 employees and that the nine job classifications in the unit found appropriate in the May 20 Decision and Direction of Election will increase to 24. Contrary to the Employer, the Petitioner asserts that the Employer's expansion plans are dependent upon uncontrollable factors and are too vague and indefinite to warrant a delay in conducting an election in the petitioned-for unit. As noted above, I find that the Employer's current workforce is substantially representative of the workforce it will employ in the reasonably foreseeable future and I am ordering that an election be conducted.

Facts. The Employer operates the largest State-certified recycling business in Hawaii and is one of four recycling companies on the Island of Oahu. On Oahu, it operates a processing facility/redemption center at Halawa, and 20 redemption centers at other Island locations.

On January 1, the State of Hawaii implemented a new law (called HI-5) establishing a deposit program whereby consumers are charged a five cent deposit for each aluminum, glass or plastic recyclable container. The deposit is redeemable at State-certified redemption centers such as those operated by the Employer.

Even prior to the implementation of HI-5, the Employer's unit workforce had been steadily expanding. Between January and December 2004, the unit workforce

increased from 19 to 34. Between December 2004 and the hearing on April 19, the unit workforce expanded from 34 to 69. By the June 20 remand hearing, the Employer employed 86 unit employees and an overall workforce of 106.

At the hearing on April 19, Employer President Telfer testified that by the end of 2005, the Employer expected to add approximately one-third to one-half again as many employees as it then employed. However, prior to issuance of the Decision and Direction of Election on May 20, the Employer had not asserted that the petition should be dismissed or placed in abeyance because of the expansion of its workforce.

On May 13, a meeting took place between Employer representatives and officials of the State of Hawaii. The Employer asserts that as a result of this meeting, it decided to greatly expand its Oahu operations and hire many more employees in many different job classifications than it had previously anticipated hiring. At the June 20 remand hearing, the Employer presented President Telfer's testimony, and introduced exhibits to support its position that its current unit workforce is not substantially representative of the unit workforce it will employ in the reasonably foreseeable future.

The May 13 Meeting With State Officials. On May 13, President Telfer and the Employer's Marketing Development Manager, Bruce Iverson, attended a meeting at the Hawaii Department of Health (the Health Department), the state agency primarily responsible for the implementation and oversight of the HI-5 program. The Health Department has regulatory authority over companies operating under HI-5 and possesses the authority to issue and revoke certifications and operating permits and to assess fines of up to \$10,000 a day against companies that fail to comply with permit

requirements. All of the Employer's recycling operations must be certified by the State and the operation of redemption centers requires several different permits.

Prior to the May 13 meeting, the Employer had received two letters of warning from the Health Department and officials from that Department had discussed with Employer officials the high number of complaints filed by consumers against the Employer regarding its Oahu redemption centers. The complaints primarily involved the early closure of such centers and the rudeness of the employees operating the centers. The record does not include either the letters of warning from the Health Department or any of the consumer complaints filed against the Employer. When the Director of the Office of Environmental Quality, Genevine Salmonson, arranged the May 13 meeting with President Telfer, Salmonson told Telfer that the Governor's office had insisted that the number of complaints be reduced. She further stated that the Health Department might be forced to assess fines against the Employer and consider withholding its operating permits.

Attending the May 13 meeting were several Health Department officials including Salmonson, State Recycling Coordinator Jennifer Tosaki, Chief of Solid Waste Management Steven Chang, Solid Waste Management Representative Lane Otsu and two Health Department inspectors. During the meeting, Telfer and Iverson described how the Employer had been struggling to meet the rapidly growing consumer demand for recycling services. Specifically, they described how the Employer had been unable to process recycled materials quickly enough to avoid a backlog at the Halawa processing center and had been unable to change out full trailers from its redemption centers quickly enough to avoid having to close them

earlier than their scheduled closing times. The Health Department officials responded that they were under a great deal of pressure “to fix the thing and/or fine or pull permits,” and several times during the meeting, they threatened to impose sanctions on the Employer.

At the May 13 meeting, Telfer and Iverson used a one-page fact sheet to describe the Employer’s plan to solve the problems giving rise to consumer complaints. The fact sheet is a one-page document which states that the Employer’s workforce had grown from 32 employees on December 31, 2004, to 81 employees at the time of the May 13 meeting; that on May 10, the Employer had hired five new field employees and four new employees for its Halawa facility; that on May 1, it had hired a loss-control employee to travel among its centers to deal with monetary needs, drinks, security issues, etc; and that it had promoted four employees to supervisory status to begin as such when replacement staffing allowed. The fact sheet also states that the Employer was in the process of hiring a new training manager, was recruiting a human resources manager and two assistant plant managers, and had hired a company controller who was to begin work on May 16. In addition, the fact sheet states that the Employer was in the process of obtaining permits for a new facility at Sand Island to relieve the stress on the Halawa plant and to extend the Employer’s processing capability. The fact sheet also states that the Employer was extending the operating hours at its Halawa facility from 8 a.m. to 5 p.m. six days a week, to 6 a.m. to 10 p.m. seven days a week.³ Other than the fact sheet, Telfer testified

³ The fact sheet also states that the Employer had purchased 120 steel bins to speed up its processing time and that 40 of the bins had been received, 40 were to be delivered on May 25, and 40 were to be delivered on May 31. The fact sheet also states with regard to “vehicular issues,” that the Employer had brought one new truck on line on May 9 and would bring three more on line the following week. Finally, the fact sheet notes that 13 employees were now fork-lift certified.

that the only documentation of the May 13 meeting was an e-mail scheduling a follow-up meeting.

At the May 13 meeting, Telfer and Iverson stated that the Employer's plans also included hiring a human resources manager, a dispatcher, field supervisors and more plant and field employees. The only positions that State officials specifically urged the Employer to fill were those of human resources manager and dispatcher. With regard to the dispatcher position, State officials expressed their hope that a dispatcher could communicate frequently with the redemption centers to ensure that trucks were promptly dispatched to switch out full trailers so the centers could stay open.

Although the fact sheet referred to extending the hours at the Halawa facility to 10 p.m., at the May 13 meeting, Telfer and Iverson discussed keeping the facility open only until 7 p.m., which was two hours later than its 5 p.m. closing time. However, according to Telfer, by the end of the meeting, everyone agreed that staying open until 7 p.m. would probably not solve the backlog problems and the facility would probably need to stay open until 10 p.m. Telfer and Iverson also discussed their plan to open additional redemption sites. The State officials responded that the solution was not just to add additional redemption sites but to fix the problems at existing sites, such as rudeness by redemption center buyers. In this regard, the officials urged the Employer to take advantage of State-subsidized customer service and supervisor training programs. Telfer also suggested that there be ongoing meetings with the State officials and another meeting was scheduled a few days after the June 20 remand hearing.

Telfer testified that as a result of the May 13 meeting, he believed that if something was not done quickly to resolve the Employer's problems, its entire operation

could be jeopardized. He testified that he concluded that “business as usual was not going to work,” and that the Employer needed to “start thinking bigger.” Specifically, he decided that the Employer needed to open up more redemption sites to take the stress off existing sites and to have more than one buyer and one helper at each redemption site. In addition, he decided that the Employer would keep its Halawa processing center open after it opened its new processing center at Sand Island in September or October. Prior to the May 13 meeting, the Employer had planned on operating the Halawa facility on a month-to-month basis only until September or October when the Sand Island facility was fully operational.⁴ After the May 13 meeting, Telfer decided that the Employer should operate both facilities and use the Halawa facility to handle processing for certain areas of Oahu and the Sand Island facility to handle processing for other areas. The decision to continue operating the Halawa facility was also made because it housed one of the Employer’s main redemption centers on Oahu. The Employer’s decision to keep open the Halawa facility necessitated the purchase of new equipment for the Sand Island facility, including a new baler, conveyor, and plastic shredder. At the time of the June 20 remand hearing, the Employer had already purchased this equipment. In addition, Telfer testified that the Employer was on schedule to open the Sand Island facility in September or October 2005, having painted the offices, retiled the floors, and set up phone and

⁴ The Employer’s plan to open the new Sand Island facility and transfer its Halawa operation to that facility was known to the parties at the time of the April 19 hearing. Telfer testified that the Employer’s lease for the Halawa facility would expire in August and the landlord was aware that the Employer wanted to extend the lease and would be meeting with the Employer after the remand hearing. According to Telfer, the only reason the lease would not be renewed was if the owner decided to sell the property in which case the Employer would have the first option to buy the property.

computer systems. At the time of hearing, it had begun to move office staff into that facility.

After the May 13 meeting, Telfer arranged for a meeting with the Governor's office the week before the June 20 remand hearing. At that meeting, the Employer presented the Governor's office with an updated version of its plan to deal with the problems in its operation. The record contains no documentation regarding this meeting and no directives from the Governor's office to the Employer. As indicated above, the Employer had scheduled a follow-up meeting with Health Department officials to be held within a few days after the June 20 remand hearing.

Telfer testified that between the May 13 meeting with State officials and the June 20 remand hearing, the Employer received additional complaints from the State primarily concerning early site closures.

The record contains a May 27 memorandum from Telfer to "All Reynolds Work Associates," stating that "We wanted to make sure that all of you knew that the Company will be making major changes in operations because the State of Hawaii just let us know that we need to keep up with the increase in recycling or we could be in trouble." The memorandum relates the Employer's decision to keep the Halawa plant open after the opening of the Sand Island plant and to operate both plants from 6 a.m. to 10 p.m., and to operate with two 8 hour shifts instead of one. The memorandum refers to the Employer's need to hire many new employees in many different kinds of jobs up to a total of about 300 employees. According to Telfer, the Employer posted this memorandum in its workroom and gave it to field supervisors to distribute to redemption center employees.

Telfer testified that the meetings with Health Department officials and the Governor's office caused him to revise the Employer's reorganization plan. The record contains a document entitled "Reynold's Recycling Inc. Business Reorganization Plan" (herein called the Plan). Telfer testified the Employer intended to present the Plan to State officials at the meeting to be held a few days after the June 20 remand hearing. According to Telfer, the Plan is an updated version of the plans presented at the May 13 meeting and the meeting with the Governor's office. The Plan sets forth several goals, including satisfying the Health Department's demands; avoiding further closures of redemption centers; timely collecting and processing all recyclable materials redeemed by consumers; increasing efficiency and overall production; avoiding further consumer complaints; avoiding State sanctions and penalties; and retaining State certification as a recycler.

The Plan generally describes changes to be made in the Employer's operation on a month-by-month basis beginning in May. Thus, for May, the Plan states that the Employer will operate two processing centers; operate double 8-hour shifts at its Halawa processing center from 6 a.m. to 10 p.m., open new redemption centers, open new RVM centers, create new job classifications, and hire more employees for existing and new job classifications. The entries for June through August describe the construction occurring at the Employer's new processing plant at Sand Island and the purchase of equipment for that facility as well as the Employer's plans to expand redemption center locations, including new locations at Pupukeia, Waianae, Kahaluu and Makahu; the expansion of existing redemption center locations at Kalama, Waimanalo and Wahiawa; the finalization of leases for new RVM depot centers at Waipio, Waipahu and Koko Marina,

and the setting up of those centers; and the Employer's dealings with realtors in order to locate new sites for its RVM facilities. Finally, the Plan includes the hiring of additional employees and the administration of supervisory and customer service training.

Specifically for July, the Plan refers to expanding the hours of operation of the Halawa center from 6 p.m. to 10 p.m. by July 11. For September, the Plan lists making the Sand Island facility operational by September 15 and opening the Koko Marina RVM Center by October 1. For the redemption centers, the Plan refers to opening new locations at Pupukeia, Waianae, Kahaluu and Makaha by October 15, and the expansion of existing redemption centers at Kalama, Waimanalo, and Wahiawa. For December through March 2006, the Plan generally refers to the expansion of redemption centers and new RVM depot centers, the hiring of new employees, and the administration of customer service training. The Plan indicates that in March 2006, a new RVM depot center is scheduled to open in Waipio. The Plan does not list specific dates for the signing of new leases or the opening of new facilities nor does it list a specific number of employees to be hired in connection with the opening of new facilities or the expansion of existing ones.

As of the June 20 remand hearing, Telfer testified that the Employer had hired five new field employees and four new plant employees. However, he was unable to identify the number of new employees hired into all job classifications.

Telfer testified that the Employer ultimately intended to operate double shifts at the Halawa and Sand Island facilities seven days a week from 6 a.m. to 10 p.m., which would require the hiring of about 50 new unit employees for the Sand Island facility and about 20 additional unit employees for the second shift at the Halawa facility. According to Telfer, at the time of the June 20 remand hearing, the Employer had already hired two

night managers to manage the second shift at Halawa. As indicated above, the Sand Island facility is to begin operating in September or October and the Employer anticipates that the Halawa facility will begin operating until 10 p.m. at about the same time. Telfer testified that he believes a double shift at both plants is justified by current market conditions because the Employer is unable to process materials fast enough to keep all of its redemption centers open. However, he acknowledged that the Employer would not operate double shifts if the work was not there to be done.

At the time of the June 20 remand hearing, the Employer operated the same number of redemption centers (i.e., 21) that it had operated at the time of the April 19 hearing. Telfer testified that the Employer had hired enough redemption center buyers and that most of the centers had two buyers by the time of the June 20 remand hearing. Telfer also testified that the Employer had recently lost one of its redemption centers in Waianae but was about to open a new center to replace it. He further testified that in August, the Employer would lose its redemption center located at the Kalihi Shopping Center in Honolulu. Both sites had been lost because the properties where they were located had been sold.

According to Telfer, the Employer is in the process of opening four new redemption centers, which will require hiring eight new employees. It anticipates opening a total of eight new redemption centers. However, Telfer testified that the Employer had been trying for months to find new redemption center sites but had had difficulty finding sites in the Honolulu area that could accommodate the Employer's 45-foot trailers because most of the shopping center parking lots were too small. As indicated above, in the Plan, there is a reference to the opening of new redemption center

locations at Pupukeia, Waianae, Kahaluu and Makaha by October 15, and the expansion of the existing redemption centers at Kalama, Waimanalo, and Wahiawa. However, the record otherwise contains no evidence regarding the opening of new sites at Pupukei or Kahaluu or Waianae and with respect to Makaha, the only evidence is Telfer's testimony that the Employer had met with landlords in Makaha in an effort to find new sites. With regard to the expansion of the centers in Kalama, Waimanalo and Wahiawa, Telfer's testimony indicates that the efforts taken by the Employer with regard to those facilities had been to hire employees for "expanded hours of operation." In sum, the record contains little concrete evidence showing what actions the Employer has taken to ensure that the opening of the new facilities and the expansion of existing facilities will actually take place.

Reverse Vending Machine (RVM) Locations. At the time of the April 19 hearing, the Employer had two facilities (at Halawa and Enchanted Lakes) each with six reverse vending machines (RVMs).⁵ Telfer testified that because of the difficulty finding redemption center sites and because only a few retailers had leased RVMs from the Employer, which is the RVM distributor for Oahu, the Employer had decided to lease retail space for its own RVM depots. Telfer testified that the Employer intends to ultimately have 13 RVM depots on Oahu and is currently working on leases for three new RVM depots, including one which should open at Koko Marina in August; and two others (at Mill Town Center and at Kauka Street in Honolulu), on which construction had recently begun and which would open in about a year. With regard to the other depots

⁵ [RVMs are self-service recycling machines.](#)

the Employer plans to open, Telfer testified that the Employer is currently working with a realty company in an attempt to locate sites for such depots. The process will involve finding sites, negotiating with the owners or landlords, executing leases, and installing the RVM machines. The Employer plans to install 30 RVM machines at each new depot and to have two or three employee attendants to assist consumers using the machines.⁶ Such depots are intended to make the redemption of recyclables much more convenient for consumers and more efficient since many consumers could recycle their containers at the same time at a single location.

Old and New Classifications of Employees. Telfer testified that with regard to the job classifications in the unit found appropriate in the Decision and Direction of Election, the number of production workers 1 and 2 had grown. However, he was unable to testify as to the specific number at the time of the June 20 hearing nor was he able to testify as to how many redemption center buyers had been added to the 26 who were employed at the time of the initial hearing on April 19. He testified that there were currently seven CDL and Class 4 drivers, one head processor and two vacation relief employees. He further testified that one of the two maintenance employees employed as of the April 19 hearing had been promoted to RVM technician and another maintenance employee had been hired to replace him.

The record contains a list of 15 new classifications of employees that Telfer testified the Employer had hired or would hire in the next 12 to 18 months. These include equipment repair and maintenance employees, auto mechanics, RVM operators,

⁶ At the time of the remand hearing on June 20, the Employer had about 26 RVM machines ready to install at the new locations.

RVM technician, RVM parts employees, plastic shredder operators, baler operators, sorters, plant inventory clerks, painters, carpenters, janitorial employees, Class B drivers, RVM drivers (regular license), and dispatchers. As indicated above, Telfer testified that the only one of these 15 positions that State officials had insisted the Employer fill was that of dispatcher. The Employer had hired a new dispatcher the week prior to the June 20 remand hearing. The record includes newspaper advertisements recently placed by the Employer for many of these positions. However, Telfer testified that because of Hawaii's low unemployment rate, the Employer was having difficulty finding qualified individuals for these positions.

Telfer testified that the Employer plans to hire between three and five equipment repair and maintenance employees at each of its facilities (i.e., Halawa and Sand Island) who will repair and maintain equipment, including conveyors, scales, shredders, balers and other processing equipment. In the past, Telfer testified that such work had been performed by a part-time employee, who worked 20 hours a week, by two plant employees, by the plant manager, and by subcontractors. At the time of the June 20 remand hearing, the Employer had hired one new employee in this position.

The Employer intends to hire between six and eight auto mechanics (three at Halawa, three at Sand Island and two trainees). At the time of the June 20 remand hearing, the Employer had hired only one mechanic.

Telfer testified that the Employer intends to hire about five RVM technicians and 100 RVM attendants⁷ to operate the additional 15 depots it planned to open, which would

⁷ At the time of the remand hearing, the Employer referred to these employees as RVM attendants but Telfer testified that the Employer's intention was to change their job title to RVM depot buyers.

operate seven days a week from 9 a.m. to 9 p.m. The RVM attendants perform the same job as the employees who work at the existing RVM facilities at Halawa and Enchanted Lakes. Their job functions are also similar to those of the redemption center buyers in that they pay redemption money to consumers.

The RVM technicians will receive specialized training from the manufacturer of the RVM machines to enable them to repair and maintain the machines. At the time of the June 20 remand hearing, the RVM technicians performed only diagnostic tests on the RVM machines. As of the June 20 remand hearing, the Employer had promoted one maintenance employee to the RVM technician position and had hired another maintenance employee to replace him.

The Employer intends to hire one RVM parts employee to maintain the parts for the RVM machines for all its facilities. Previously, this work was performed by a manager. The Employer also intends to hire about five employees to operate the new plastic shredder machine seven days a week on two shifts at either its Halawa or Sand Island facility.⁸ This employee will operate the conveyor controls on the shredder to ensure that it produces the right size of chip and will also be responsible for quality control. The Employer also intends to hire five baler operators to run the new bailer at the Sand Island facility. According to Telfer, because of the difficulty in finding skilled persons for these positions, the Employer may hire unskilled production employees and train them to work as balers. The record in the April 19 hearing showed that bailing

⁸ At the time of the remand hearing, Telfer testified that the Employer had not decided whether to place the plastic shredder machine at the Halawa or Sand Island facility.

work was being performed at the Halawa facility by the head processor. Head processors and production employees I and II are both unit classifications.

The Employer intends to hire between six and ten sorters whose function is to stand on the conveyor belt and pick out green plastic before it enters the plastic shredder. It appears from the record at the April 19 hearing that the job of sorter is similar to that of the production workers who sort recyclables at the Halawa facility and are included in the unit found appropriate in my Decision and Direction of Election.

According to Telfer, the Employer plans to hire four new plant inventory clerks (i.e., one or two at each of its Halawa and Sand Island facilities) to make decisions regarding the timing of pick ups of trailer loads and to assist in calculating monthly inventory. The Employer also plans to hire one painter at Halawa and one at Sand Island to paint its trailers and other facilities. Previously, unit employees had handled this function but Telfer testified that they are now too busy to do so. At the time of the June 20 remand hearing, the Employer had hired one painter.

Telfer further testified that the Employer intends to hire a carpenter to repair the wooden floors of its trailers. Maintenance employees, who are included in the unit found appropriate in the Decision and Direction of Election, previously handled such carpentry work. The Employer also intends to hire about ten full-time and part-time janitors for both facilities. Such work was previously performed by unit employees and management as their work time permitted. At the time of the June 20 remand hearing, the Employer had hired one full-time and one part-time janitor.

With regard to drivers, Telfer testified that the Employer was going to require additional CDL drivers at both of its Halawa and Sand Island facilities as well as drivers

with regular licenses at both facilities who will drive small vans to pick up and deliver parts for the RVMs.⁹ At the time of the remand hearing, the Employer employed only one driver who drove a box truck to perform such work. Specifically, Telfer estimated that the Employer would need about ten CDL drivers at its Halawa facility and 15 at its Sand Island facility. He also estimated that the Employer would be hiring about five new RVM drivers for the Halawa facility and five for the Sand Island facility. The Employer will also hire a Class B driver to drive its garbage truck.

Telfer further testified that the Employer also intends to hire five dispatchers for Halawa and Sand Island. However, at the time of the remand hearing, it had hired only one dispatcher. There is no evidence that unit employees have ever performed dispatching work.

Telfer's testimony shows that many of the job classifications which the Employer contends are "new" (i.e., RVM operators, RVM technician, baler operators, sorters, janitors, painters, carpenters, repair and maintenance employees, Class B drivers and RVM drivers) will actually perform the same work or substantially similar work as that already performed by employees included in the unit found appropriate in the previously issued Decision and Direction of Election. Telfer's testimony also shows that what the Employer is doing to a large extent in creating these new classifications is severing certain tasks from the jobs performed by unit employees and making separate classification to perform such tasks. Indeed, Telfer testified that because of the difficulty in finding experienced job applicants, the Employer may actually hire employees into the

⁹ Telfer testified that Class B and Class 4 drivers refer to the same drivers.

unit classification of production employee and then train them to handle more specialized work such as that of baler.

Growth in the Recycling Business & Competition. The record reflects that Telfer's estimates of hiring by the Employer are based on his "brainstorming" of classifications he considered necessary to implement its reorganization plan and meet growing market demand. However, the record contains no evidence other than Telfer's testimony to substantiate the alleged growth in the recycling market or the Employer's likely share of the recycling market on Oahu. Moreover, Telfer's testimony is to some extent vague on these issues. Thus, at one point at the June 20 remand hearing, he testified that the State's recycling rate had grown from 28% to 38% since the HI-5 statute was implemented and at another point his testimony suggests that the State's recycling rate already had reached 70%. Similarly, his testimony suggested at one point that the Employer's market share was 35% and at another point that it was as high as 70%.¹⁰

¹⁰ At various points in the June 20 remand hearing, Telfer testified as follows on this issue:

It's totally, totally different. We felt we were glad the law started. Volume was going to increase because we're going to have a 35 percent market share. And that 35 percent market share was based on 70 percent recycling rate which we felt would take at least a year or longer. And we're doing today what I thought we would be doing in December.

That prior to December of '05, our market share was 35 percent. And now since there are no other players that are stepping forward to solve it, we're probably looking at about a 70 percent market share.

Right now the State is only about a 38 percent recycling rate. And we know that under bottle bills, the rate goes to 70 to 90 percent depending upon how people want their nickels back.

Under the Bottle Law, the recycling rate prior to the bill was like 28 percent. And each month that recycling rate will go up. And over time, the State should be at a 70 to 80 percent recycling rate just like all the rest of the states in the United States and the 28 countries around the world. The highest rate in the U.S. is at a 95 percent recycling rate.

Telfer testified that the projected unit workforce figure of 360 employees in the next 12 to 18 months was based on his assumption that the increase in the demand for recycling would continue to grow, warranting the need for longer hours at both facilities and the opening of more RVM depots and redemption centers. He testified that the recycling market was very volatile but there was one thing that he knew “for sure,” that the recycling rate was “going up providing the consumers have enough places to recycle.”

As indicated above, Telfer also testified that he believed that having two plants with two shifts operating seven days a week would be currently justified because the Employer was filling up its trailer sites at times by noon and clearly needed to have a larger processing capacity. But according to Telfer, whether the Employer ultimately ran two shifts seven days a week at both plants would be “based entirely on the number of units received . . . But I believe the the volume will be there based upon our growth projections.” However, he testified that “if there’s no work, we will not hire.”

As indicated above, the Employer has several competitors in the recycling industry on Oahu. The record contains no documentation or other evidence regarding the Employer’s market share or the market share of any of the Employer’s competitors on Oahu or their plans.

Telfer testified that none of the existing recycling businesses on Oahu had “stepped up to the plate,” and there were no other companies that he was aware of that were interested in participating in the recycling program on Oahu. He further testified that the Employer is different from its competitors in having full-time permanent RVM locations instead of using trucks with RVM machines that visit locations for only a few

hours at a time. Telfer testified that his reorganization plan reflected his assumption that the Employer was “going to have to step up to the plate and fix all these other problems because nobody else is going to.” Telfer testified that there had not been a bottle deposit law enacted in the United States in 25 years, that it takes about 18 to 24 months to “debug” such laws, and that while the Employer hoped that its reorganization plan would be mostly completed by the first quarter of 2006, it would probably be the end of 2006 before it was finalized.

Analysis. The Employer contends that the petition should be dismissed as premature or placed in abeyance because it is in the beginning stages of a reorganization process and does not employ a representative or substantial complement of employees. Specifically, the Employer contends that within the next 12 to 18 months, its workforce will grow from about 86 to approximately 360 employees and there will be an additional 15 job classifications beyond the nine which were included in the unit in the Decision and Direction of Election. The Petitioner takes the position that I should deny the Employer’s request and order an election because the Employer’s expansion plans are too vague and indefinite and dependent upon uncontrollable factors to warrant a further delay in the exercise of the right of employees to an election.

For the reasons discussed below, I decline to grant the Employer’s request to dismiss the petition or hold it in abeyance. Instead, I find that the Employer employs a substantial and representative complement of the unit employees that it will employ in the reasonably foreseeable future and I am therefore ordering that an election be held in the unit found appropriate in the previously issued Decision and Direction of Election with certain modifications, as described below.

It is well settled that the Board will direct an immediate election, notwithstanding an employer's plan to expand its workforce, when the employer's current complement of employees is "substantial and representative" of the unit workforce to be employed in the reasonably foreseeable future. See *Toto Industries (Atlanta)*, 323 NLRB 645 (1997); *General Cable Corp.*, 173 NLRB 251 (1968). The Board's "substantial and representative" complement test balances two competing objectives: that of not depriving current employees of the right to select or reject a bargaining representative simply because the Employer plans an expansion in the near future; and the objective of not imposing a bargaining representative on employees to be hired in the immediate future, based on the vote of an unsubstantial or unrepresentative group of current employees. In applying this test, the Board uses a case-by-case approach, analyzing the relevant factors in each case. Factors used to determine whether the employee complement is sufficiently substantial and representative to order an immediate election in an expanding unit include: (1) the size of the present work force at the time of the representation hearing; (2) the size of the employee complement who are eligible to vote; (3) the size of the expected ultimate employee complement; (4) the time expected to elapse before a full work force is present; (5) the rate of expansion, including the timing and size of projected interim hiring increases prior to reaching a full complement; (6) the certainty of the expansion; (7) the number of job classifications requiring different skills which are currently filled; (8) the number of job classifications requiring different skills which are expected to be filled when the ultimate employee complement is reached; and (9) the nature of the industry. *Toto Industries (Atlanta), Inc., supra.*

In general, the Board will find an existing complement of employees to be substantial and representative when approximately 30 percent of the eventual employee complement is employed in 50 percent of the anticipated job classifications. *Custom Deliveries*, 315 NLRB 1018, 1019 fn. 8 (1994); see, e.g., *Gerlach Meat Co.*, 192 NLRB 559 (1971). An expansion that is anticipated to be completed within a few months will generally be considered as within a reasonably foreseeable period whereas an expansion that will take a year to complete may or may not be considered as within a reasonably foreseeable period depending upon the interplay of the other factors to be considered, especially the magnitude and certainty of the anticipated expansion. See *Some Industries, Inc.*, 204 NLRB 1142 (1973) (where a year was found to be within a reasonably foreseeable period); *Bekaert Steel Wire Corp.*, 189 NLRB 561, 562 (1971) (where one year was deemed too remote); see also *Gerlach, supra* (where two years was found to be too remote).

Examining the above factors, the record shows that the Employer's overall workforce stood at 106 and the size of the unit workforce stood at 86 at the time of the June 20 remand hearing. The size of the anticipated employee complement is about 360 employees. The time expected to elapse before the full complement is hired is about 18 months. The rate of expansion of the workforce cannot be discerned from the record with any degree of certainty because the record contains little concrete evidence regarding it. Other than the Employer's hire of about 20 new employees since the April 19 hearing, the record discloses no specific timetable for the Employer to hire new employees. Thus, the Plan, which the Employer introduced at the June 20 hearing, contains no description of the number of hires in specific job classifications or the

anticipated dates of such hires. Instead, the Plan as well as other record evidence contains mostly generalized references to the Employer's intention to hire for certain facilities or for certain areas of its operation. Further, Telfer's testimony does not disclose with any specificity the timing and nature of the projected interim hiring increase before a full employee complement is reached.

Nor does the record show a high degree of certainty that the planned expansion will occur within the time frame predicted by the Employer. Thus, the Employer presented the testimony of only one witness and no documentary evidence to support its contention that the current unit workforce is less than a substantial and representative complement. President Telfer's testimony shows that he created a reorganization plan in response to his view of market demand and the concerns expressed to him by State officials. However, Telfer's opinions alone are not sufficient to establish the certainty of the Employer's expansion. The record contains little by way of concrete evidence to show what the Employer has done and/or is doing to ensure the changes described in the reorganization plan within the 12 to 18-month time frame. For example, while the Plan lists the opening of new redemption centers at certain locations, the record contains little evidence regarding the new centers or the actual commitments made by the Employer to ensure that they will open as indicated. Similarly, with regard to the opening of new RVM depots, while the record indicates that one new facility is due to open in August and that others will require the construction of new facilities or the leasing of retail space, the record does not contain concrete evidence to show what steps have been taken to lease or construct such facilities. The record includes no copies of leases or other documentation to show that that the Employer has committed itself to such expansion.

Similarly, Telfer gave somewhat vague and inconsistent testimony regarding the State's recycling rate, market demand and the Employer's market share, but no documentation or other supporting evidence was offered to substantiate such testimony. Thus, Telfer's testimony shows that the Employer has at least three competitors in the recycling market on Oahu. However, other than Telfer's view that none had "stepped up to the plate," the record contains nothing to substantiate Telfer's testimony in this regard.

Moreover, Telfer's testimony raises doubts that his planned and/or predicted changes will actually occur within the anticipated timeframe. For example, Telfer testified that Hawaii's high employment level makes finding qualified applicants for new positions very difficult and means that it may take longer than anticipated. Similarly, Telfer testified about how difficult it is to find new locations for redemption center sites and how the Employer was actually losing two such sites. Telfer even testified that as of the June 20 remand hearing, the Employer had no agreement with its landlord to extend the lease on the Halawa processing plant beyond August, a factor which could potentially undercut its plan to continue operating that plant after the Sand Island facility opens. The record also contains evidence of events that could further tend to undermine the timing of the Employer's planned expansion. Thus, the record reflects that the Employer unexpectedly lost one redemption center site just before the June 20 remand hearing and would lose another in August because the owners had sold the properties.

Further, while Telfer's testimony makes it clear that the Employer has embarked on an ambitious plan to reorganize its operation and to expand its workforce, his testimony shows that the plan was not expressly mandated by the State. Rather, Telfer's testimony shows that the major concern expressed by State officials was that the

Employer decrease the number of consumer complaints caused by the early closure of its redemption centers and the rudeness of redemption center employees. State officials did not direct the Employer to hire many new employees in many different job classifications. Rather, the only input by State officials that potentially affected the size of the Employer's workforce was their apparent agreement that the operating hours of the Halawa plant should be extended to 10 p.m., and their urging the Employer to hire a dispatcher.

In sum, while Telfer's testimony may suggest that the only way the Employer could resolve the State's concerns is to increase its processing capacity in other ways such as operating both the Halawa and Sand Island facilities; operating double shifts; or opening new redemption and RVM facilities, the record does not establish that the expansion of the Employer's workforce to the extent presented at the June 20 remand hearing was necessary in order to effectively respond to the State's complaints and avoid fines and/or revocation of operating permits.

Given the foregoing considerations, I cannot find that the Employer will have a workforce of 360 employees within the 12 to 18 month period predicted by the Employer. Rather, I find that while the Employer has demonstrated generally that its workforce will expand, it has not established with any degree of certainty that it will expand beyond the point where the current workforce is less than 30% of the ultimate workforce within a reasonably foreseeable period. Any other conclusion would be speculative at best.

With regard to the number of new job classifications requiring different skills from those of classifications currently in the unit, the Employer presented a list of 15

“new” job classifications that it intends to hire in the next 12 to 18 months. However, Telfer’s testimony shows that many of the classifications the Employer categorizes as “new” (i.e., RVM operators, RVM technician, baler operator, sorters, janitors, painters, carpenters, and repair and maintenance employees) will actually perform the same duties and functions currently being performed by production workers or other unit employees. Further, although the Employer is adding two new driver classifications (Class B driver and RVM driver), the employees in these classifications will be performing driving work like the drivers in the unit found appropriate in the previously issued Decision and Direction of Election. Finally, although Telfer testified that the job of RVM technician will be changed because it will require actual maintenance and repair duties rather than attendant work, this change in duties does not make the position itself new; rather, it means that the same position is being given different responsibilities. For this reason, I do not consider the RVM technician to be a new position as contended by the Employer.

In sum, I find that the classifications of RVM operator, RVM technician, baler operator, sorter, janitor, painter, carpenter, repair and maintenance employee, Class B driver and RVM driver are not new classifications. Rather, the only new classifications requiring the performance of new duties are those of RVM parts employee, plant inventory clerk, dispatcher, auto mechanic and plastic shredder operator. Further, as of the June 20 remand hearing, the Employer had hired a dispatcher and an auto mechanic as well as equipment repair and maintenance, janitor and painter employees. Thus, ten of the so-called “new” classifications are not actually new and already had employees in them and were included in the unit found appropriate in the previously issued Decision and Direction of Election. Further, employees had been hired in two of the remaining

five “new” classifications. Accordingly, I find that at the time of the June 20 remand hearing, the Employer had employees working in 11 of the 15 classifications the Employer contends are new and in 21 of the 24 classifications the Employer asserts it will have when it reaches its full employee complement.¹¹ The only new classifications in which there were no employees are those of RVM parts employee, plant inventory clerk and plastic shredder operator. Thus, as of the date of the remand hearing, the Employer employed employees in a majority of its so-called “new” job classifications and in a majority of the total number of potential classifications for the foreseeable future.

In determining whether the Employer’s current unit workforce constitutes a substantial and representative complement of its anticipated workforce, I have also considered the Employer’s anticipated timeframe for completing its expansion and I find that 18 months cannot be considered a reasonably foreseeable period, given the lack of concrete evidence to establish the rate or certainty of the expansion.

Moreover, it is significant that at the April 19 hearing, the parties stipulated to a unit covering all of the Employer’s unit employees on Oahu with the exception of redemption center buyers even though at that time they were already aware of the plan to open the new Sand Hill facility and the Employer’s plan to expand its workforce by as much as 50% by the end of 2005. Further, the Employer did not raise the lack of a substantial and representative employee complement issue until after the Decision and Direction issued on May 20.

¹¹ Thus, I find that employees had been hired in 21 of the potential 24 classifications, i.e., the nine classifications included in the unit in the May 20 Decision and Direction of Election, the ten classifications that the Employer claims are “new” but which are actually new names for existing classifications, and two of the five classifications which I have found are actually new in which the Employer has hired employees (i.e., dispatcher and auto mechanic).

In sum, I find that the Employer's current workforce is a substantial and representative complement of its projected workforce since it includes more than 30% of the number of employees and more than 50% of the total number of job classifications in the Employer's workforce for the foreseeable future. I therefore decline to grant the Employer's request to dismiss the petition or to hold it in abeyance. Instead, I order that an election be conducted in the unit found appropriate in the previously issued Decision and Direction of Election with the following modifications.¹²

Although I do not find that most of the classifications that the Employer asserts to be new actually are new for purposes of applying the substantial and representative complement test, I am nevertheless modifying the unit found appropriate in the May 20 Decision and Direction of Election to include employees in the classifications which the Employer asserts to be new. I do so in order to ensure that the unit description includes the titles that the Employer is currently using and intends to use in the near future even though such classifications may refer to jobs currently being performed by employees in the unit found appropriate in the May 20 Decision and Direction of Election under another job title.¹³ I find that employees in the "new" job classifications described by the Employer plainly have a community of interest with the employees in the unit found appropriate in the May 20 Decision, given the fact that their functions have been

¹² I note that it is not the Board's usual practice to hold a petition in abeyance or set an election for a date to be determined in the future. Rather, where a finding is made that the requested unit is expanding in size and/or changing in its basic character to such an extent that the present complement of employees is not substantial and representative in relation to that projected for the reasonably foreseeable future, the Board dismisses the petition as untimely filed. See *K-P Hydraulics Co.*, 219 NLRB 138, 138 (1975).

performed by unit employees and/or are substantially similar to the work performed by existing unit employees, and that they work or will work alongside other unit employees performing manual labor.

Accordingly, I hereby direct an election in the following unit of employees, which I find to be an appropriate unit for collective bargaining purposes:

All full-time and regular part-time production workers 1, production workers 2, redemption center buyers, CDL drivers, Class B drivers, Class 4 drivers, RVM drivers, dispatchers, RVM technicians, RVM operators, RVM parts clerks, plastic shredder operators, baler operators, sorters, plant inventory clerks, auto mechanics, equipment, repair and maintenance employees, head processors, vacation relief employees, painters, carpenters, maintenance employees, maintenance welders and janitors employed by the Employer on the Island of Oahu, Hawaii; excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. In this regard, Section 103.20(c) of the Board's Rules and Regulations, as interpreted by the Board, requires employers to notify the Regional Director at least five full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Failure to do so *estops* employers from filing objections based on nonposting of the election notice. Eligible to vote are those in the unit who are employed during the

¹³ In this regard, I note that as of the June 20 remand hearing, the Employer had hired employees into several of the classifications it represented as "new" (i.e., dispatcher, equipment repair and maintenance employee, auto mechanic, janitor and painter).

payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls.

Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by HAWAII TEAMSERS AND ALLIED WORKERS, LOCAL 996, AFL-CIO.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list containing the **full names and addresses** of all eligible voters which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969); and *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the names and addresses of all the eligible voters shall be filed by the

Employer with undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the NLRB Subregion 37 Office, 300 Ala Moana Boulevard, Room 7-245, Post Office Box 50208, Honolulu, Hawaii 96850, on or before September 9, 2005. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. this request must be received by the Board in Washington by September 16, 2005.¹⁴

DATED at San Francisco, California, this 2nd day of September 2005.

/s/ Joseph P. Norelli

Joseph P. Norelli, Acting Regional Director
National Labor Relations Board
Region 20
901 Market Street, Suite 400
San Francisco, CA 94103-1735

¹⁴ In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, DC. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: www.nlr.gov.